

REMARKS/ARGUMENTS

This paper responds to the Office communication of January 9, 2009. In the office action claims 21-40 were pending and were rejected under Section 102 and/or Section 103 on the grounds summarized below. Claims 1-20 and 41-52 were previously withdrawn.

Rejection of claims 21-32 and 39-40

Claims 21-32 and 39-40 stand rejected under 35 U.S.C. 102(b) and 103(a) as unpatentable over U.S. Patent Application Publication 2001/0004397 A1 ("Kita") in view of U.S. Patent Application Publication 2003/0055516 A1 ("Gang"). The Office Action asserts that Kita discloses a storage medium, a transceiver link and a first instruction component for establishing communication with the content source using the transceiver link and using such link for downloading onto the storage medium one or more content files responsive to stored user content preferences. However, the Office Action acknowledges that "Kita fails to disclose that the music downloaded by external device 800 is downloaded responsive to stored user preferences", but questions "whether such a functional limitation distinguishes the claimed invention from Kita". Office Action, pp 3-4. The Office Action further asserts that if Kita fails to disclose downloading music from a music distribution service based on stored user preferences, the Gang reference in combination with Kita "makes obvious all limitations of the claim" (claim 21). Specifically the Office Action states that Gang discloses storing a user profile with preferences to direct the downloading of new music, citing paragraphs 5-7 of the Gang publication. The Office Action further states that "Gang eases difficulty of picking out new songs by reducing the time required and effort necessary for a user to comb through a database of music, citing paragraphs 3-4 of the Gang publication. Office Action, pp 4-5.

This rejection is respectfully traversed in view of amended claim 1.

Portable digital players have become extremely popular, in part because users have been able to download onto the players large amounts of digitized content, in various ways and from many sources. All download sources have some limitations as to content. Some are specialized to a single artist and a few songs; others have large catalogs from which user selections can be made, but even such catalogs have limitations. Thus, the offerings from any single music delivery source or system may not meet all of a user's desires. In addition, to the extent the user

must search for desired content, the search must necessarily follow the interface and use the particular metadata that a site makes available.

The present player attempts to increase user choice and convenience in selecting and placing content on the player and in replaying it in different modes. As claimed in amended claim 1, the player has features not anticipated by Kita or made obvious by the combination of Kita and Gang. As acknowledged in the Office Action, "Kita fails to disclose that the music downloaded by external device 800 is downloaded responsive to stored user preferences", but asserts that the Gang reference in combination with Kita makes claim 21 obvious, because Gang discloses storing a user profile with preferences to direct the downloading of new music. The relevant cited portions of the Gang reference state:

[0004] The background art neither teaches nor suggests a method for accurately predicting the musical taste and/or preferences of a user. The background art also does not teach or suggest search services for cellular telephone operators or m-commerce vendors (for purchasing music through a cellular telephone).

[0005] The present invention overcomes these disadvantages of the background art by providing a system and a method for predicting the musical taste and/or preferences of the user and its integration into services provided by a wireless network provider. Although the present application is directed toward implementations with wireless providers, the present invention can also be implemented on a regular, i.e., wireline, network. The core of the present invention is a system capable of predicting whether a given user, i.e., customer, likes or does not like a specific song from a pre-analyzed catalog. Once such a prediction has been performed, those items that are predicted to be liked best by the user may be forwarded to the mobile device of the user on the cellular (or other wireless) network. The system maintains a database containing proprietary information about the songs in the catalog and, most important, a description (profile) of the musical taste of each of its customers, identified by their cellular telephone number.

[0006] For example, preferably a short sample of music, optionally of low quality, is broadcast to the user. The user then decides how to handle this song, for example whether to discard it, buy the related CD, or save the reference to the song for future use. The user could also optionally request music related to the profile of another user, in order to select such music to be sent to the other user, by identifying the user (and hence the profile) according to the cellular phone number of the user. The present invention can also optionally be used to deliver targeted musical content over the mobile device, for example through a cellular network or cable network, or another type of preferably wireless network.

(emphasis added). Also relevant are Gang's paragraphs 13 and 63:

[0013] The present invention is of a system and a method for predicting the musical taste and/or preferences of the user and its integration into services provided by a wireless network provider. Although the present application is directed toward implementations with wireless providers, the present invention can also be implemented on a regular, i.e., wireline, network. The core of the present invention is a system capable of predicting whether a given user, i.e., customer, likes or does not like a specific song from a pre-analyzed catalog. Once such a prediction has been performed, those items that are predicted to be liked best by the user may be forwarded to the mobile device of the user on the cellular (or other wireless) network. The system maintains a database containing proprietary information about the songs in the catalog and, most important, a description (profile) of the musical taste of each of its customers, identified by their cellular telephone number.

[0063] Recommendation engine 82 then preferably receives information from a database 84 through a database handler 86. Database 84 maintains all relevant information, including but not limited to, information about the customers, their cellular telephone number(s), musical preferences, previously transmitted songs. Database handler 86 interfaces between recommendation engine 82 and database 84. Recommendation engine 82 also preferably includes the learning algorithms that are used to build the musical taste profile of users. Based on this profile, system 10 is capable of recommending new songs to the user with a high degree of success.

(emphasis added). From this, and Gang's Fig. 1, it is evident that Gang is a content supplier system solution, based on selling music from a pre-analyzed catalog. Moreover, the system develops and stores the user preferences and makes predictions about which selections from the catalog the user might like. This may be a good selling model, but it is not one that best serves the usability of a player in the hands of a user.

By contrast, the present player lets the user freely express his/her content preferences and also to download content meeting those preferences in a more convenient manner. As stated in applicant's application:

[0181] The present invention provides content play management enabling the user to define preferences and policies associated with content to determine the type of content and the frequency of which content is downloaded to the player 20. The policy is user programmable based on the user's own preferences. The user preferences can be defined using any combination of content attributes to specify the user's preferences. Content attributes can be either predefined by the content vendor or can be defined and added by the user and stored with the content as metadata (see FIG. 12 and accompanying text). User preferences can be used in conjunction with content attributes to determine the type of content downloaded, the frequency content is downloaded and the duration the content is stored. A scheduling function can be performed to allow the user to download content based on days of the week, number of days per month or whatever schedule is desired for

the content program download schedule.

[0182] The attributes associated with the content can be modified by the user on either the content server 110 using the play list manager software 1300 or by the user on the player 20.

(emphasis added). As further explained in applicants' specification:

[0176] The player 20 provides for Player Initiated Content Downloads. This allows the user to initiate new content downloads from the player user interface without having physical access to the content server. This feature can be used in conjunction with the virtual private network feature 54 to achieve player initiated content downloads via the Internet.

Applicant's amended claim 21 states, in part:

a storage medium in the player for storing data representing user content preferences; a wireless transceiver link for communicating with the content source; and a first instruction component for establishing communication with the content source using the transceiver link and using such link for wireless downloading onto the media content storage medium one or more content files responsive to the player-stored user content preferences, said first instruction component performing player-initiated content downloads using player-stored user content preferences to locate content at the at least one content source.

The amendments are supported by applicant's Figs. 1 and 13, as well as the above-quoted paragraphs [0176], [0181] and [0182]. The user content preferences are now structural, in the form of data stored on a storage medium on the player (see Fig. 13 at 1360). Further, the first instruction component is now defined as performing player-initiated content downloads using this player-stored user content preferences data.

The amendments emphasize the features not anticipated or made obvious by the combination of Kita and Gang. Neither Kita nor Gang teaches user content preferences stored on the player to initiate download of content based on the player-stored user content preferences. The Gang solution is a central system and seller-centered solution, relying on the seller's content server to glean information about the user to "predict" what content to (and not to) suggest to a user or download to the player. This method is a "we-can-figure-users-out" solution that is tied to a single content provider and its catalog. By contrast, applicant's system is a player- and user-centric approach that allows the users to specify their preferences directly, eliminating the need for error prone or biased predictions and allowing a user's content preferences to be applied by

the user to several different content providers. The content preferences can be sent out by the player to any content source to let the user ask for the content that the user wants, without the user being confined by a content sources suggestions or selection menu.

Kita and Gang fail for several reasons to suggest or to make obvious amended claim 21. Firstly, the reasoning for applicant's stored user preferences is not to reduce time to transmit the content to the device, but rather to ensure that user-specified and only user-desired content is downloaded to the device. Applicant provides that the preferences come from the user, are stored on the player and are available for the user to reach out to multiple content sources accessible from the player. This allows the user to request content without seller preconceptions and thus frequently receive desired content on the first attempt. This control and ability to efficiently request and efficiently download specific desired content is advantageous to users. Secondly, Gang doesn't allow for user-configured preferences to be created and stored on the player, but rather causes a user profile of preferences to be predicted by the music-seller system. The difference between these two methods is significant in the benefits of the functionality of the player and to the user. Gang's method requires and depends on prediction of content, using various predictive algorithms to solve the "recommendation problem". See Gang at paragraphs [0020] – [0054]. Given the wide variety of interests a user may have – not just music, but sports, news, various podcasts – almost any preference prediction method will frustrate a user. By contrast, the present invention allows for specific or more general content to be user-identified in preferences, which then permits it to be located and downloaded from one of several sources. The Gang method is controlled and initiated by the content service provider, which essentially is controlled by the seller of the content, based on the seller's desire to generate revenue. Applicant's player permits content preference control by the user; the guiding motivation is to access and download the user-desired content, based on user-specified user preferences, and rather than being motivated by the content seller's interests or speculation about the user.

It is respectfully submitted that the player of applicant's amended claim 21 has features making it far more user-friendly and far more likely to deliver user-desired content than the player described in Kita or resulting from the Kita-Gang combination. It is therefore respectfully submitted that amended claim 21 is patentable over Kita and the cited Kita-Gang combination.

Because claims 22-31 and 39-40 depend directly or indirectly from amended claim 21 and incorporate all the limitations of the corresponding independent claim, they are allowable for the same reasons and, further reasons, in view of their additional recitations. The additional recitations of several dependent claims merit discussion showing their further basis for patentability.

(a) Claim 22 recites, in part: “a digital content output interface, an analog content output interface, and an electronic control interface”. While Kita has an analog output at 212 for earphones there is no “digital content output interface” or “electronic control interface”. Having these as part of the docking station connector permits both a digital quality uplink to a system that has its own, perhaps more sophisticated DAC and amplifier components, and also allows external control of the player, permitting navigation to the next song, next playlist, etc, using the docked-to device as opposed to the player’s own interface. Gang has no teaching of player details and thus does not remedy Kita’s teaching deficiencies as to this feature.

(b) Claim 23 recites, in part: “a vehicle docking connector with an analog content output, a digital content output and a power input”. Neither Kita nor Gang shows a player with a vehicle docking connector, and certainly not one with a digital content output. As noted for claim 22, this permits a digital quality uplink to a system that has its own, perhaps more sophisticated, DAC and amplifier components.

(c) Claim 25 recites, in part: “the player is configured to use as a content source one or more of the following: a personal computer, a peer player, or a website”. Neither Gang nor Kita discloses a user configurable method to select among these three content sources: a personal computer, a peer player or a website. This is a distinguishing and advantageous feature of the present invention, linked to the fact that the player stores the user preferences, because it enables the player to select certain types of content from one of multiple different content sources. When the user controls the user preferences – not working from the menu of a particular content delivery system – it may be desirable or necessary to pursue several content sources.

(d) Claim 26 as amended recites, in part: “the transceiver link comprises a wireless transceiver link with a virtual private network facility”. Neither Gang nor Kita discloses or makes obvious a player device that has a VPN facility.

(e) Claim 29 as amended states in part: “user content preferences based on one or more of the following: a song title; a user-defined playlist of song titles; a user-defined genre associated with a content file; an album title; an artist; or another item of metadata associated with a content file”. As noted, the user content preferences are stored on the player and, as discussed in applicant’s specification at [0181], the user is able to define attributes that may be part of the user content preferences. This is part of the present player’s user-centric approach to content downloading. Neither Gang nor Kita discloses or makes obvious a player that has user content preferences that are user defined.

(f) Claim 30 as amended states in part: “the second instruction component enabling a user to define for communication to a content source user content preferences specifying a schedule for when content is downloaded to the player”. For downloads from most content sources the user typically must have a real time interaction with the music source to initiate and complete the download. In some cases, this means a real-time interaction that requires a wired connection to some content source, whether it is the user’s home computer, a music selling kiosk or an ISP that provides an internet connection. Wireless internet connections have provided some degree of user freedom but still typically require the user to have a real-time browser interaction with the remote music source.

Placing a control mechanism for scheduling content downloads in the player provides a significant benefit, enabling the user, not the “service” to determine when content is downloaded based on the user preferences. This provides the advantage of the user being able to set up downloads to occur automatically and at times that are best for a variety of reasons. That is, the user can in effect “preload” content by associating a download schedule with a specified user preference, setting the desired content up for later automatic download. The schedule can set up a download for right after the content becomes commonly available instead of the user having to poll to get it or have to wait for the download to complete upon a manual request. Moreover, this scheduling enables the player to “wake-up” at a predetermined time to effect a content download, allowing the player to be in standby until the appropriate time that the content may be available for download. This allows the player to preserve battery life by being in a low power standby state until the player, based on the user’s knowledge of the content availability and associated scheduling, is able to download the content. This solution enables the player to

initiate, based on the user's preferences, what content is downloaded and when. Another benefit to this solution is that the user may know that the player would normally be within range of a LAN wireless network from between 10 PM nightly and 7 am in the morning, e.g., when the user is at home and the player, unused in a briefcase or vehicle, can proceed with a download. This scheduling feature enables the player to "know" a good download time and not to try to download new content during the other times, saving battery life and not interrupting the normal use of the player during the other hours. During these other hours, the user may be using the player to listen to content and does not want to be interrupted with a download process or may not be in range of a suitable LAN, such as when the user wants to use a home LAN and reach content sources accessible using that LAN.

Neither Gang nor Kita discloses or makes obvious a player that has the scheduling of downloads based on control exercised by the player.

Accordingly, for dependent claims 22, 23, 25, 26, 29 and 30, there are additional reasons beyond those stated for claim 21, by which these claims are distinguishable over the cited prior art.

Rejection of Claim 33

Claim 33 stands rejected based on the Kita and Gang references, supplemented by US Patent Application Publication 2003/0236582 A1 ("Zamir"). The Office Action asserts that Zamir teaches tracking whether a song is skipped or fails to play to the end and implicitly teaches tracking the frequency at which a song is played. Even assuming this teaching, the cited combination does not make claim 33 obvious. Claim 33 is dependent on amended claim 21, which, as discussed above, is patentable over the Kita-Gang combination. The Zamir reference does not cure the teaching deficiencies of Kita and Gang relative to claim 21. That is, Zamir does not suggest or make obvious the user preference features on the player discussed above in connection with claim 21. Accordingly, claim 33 is patentable at least for the same reasons as claim 21.

Rejections of Claims. 34-37

Claim 34 stands rejected based on the Kita and Gang references, supplemented by US Patent 6,782,239 B2 ("Johnson"). The Office Action acknowledges that Kita does not show the

claimed frequency selector. However, the Office Action states that it would be obvious to provide a clear channel selector within Kita's radio transmission adapter and that Johnson teaches that such a device relieves a user from the burden of manually scanning for available broadcasting channels.

Claim 34 as amended states in part: "said step of selecting finding the lowest signal strength among ambient broadcast transmissions". Thus, applicant's amended claim 34 teaches not just finding an available frequency but finding an optimal one by surveying among ambient broadcast transmissions. This is not taught or suggested by the Kita-Gang-Johnson combination. thus, not only is claim 34 patentable because it depends from claim 21 (which is allowable for the reasons discussed above and because Johnson does not cure the teaching deficiencies of Kita and Gang relative to claim 21) but also because claim 34 has its own unique feature not anticipated or made obvious by the cited prior art.

Because claims 35-37 depend directly or indirectly from amended claims 21 and 34 and incorporate all the limitations of these claims, they are allowable for the same reasons as discussed for claim 21 and 34 and, further reasons, in view of their additional recitations.

Rejection of Claim 38

Claim 38 is rejected based on the Kita and Gang references, supplemented by US Patent 5,161,251 ("Mankovitz"). The Office Action acknowledges that the prior art cited against other claims does not show the claimed transmission of text data in metadata along with a broadcast signal according to RDS or equivalent. However, the Office Action states that it would be obvious to provide this feature within Kita's radio transmission adapter by modifying Kita in accordance with the teaching of Mankovitz.

Claim 38 patentable at least because it depends from claim 21, which is allowable for the reasons discussed above and because Mankovitz (even assuming it teaches about encoding and broadcasting metadata) does not cure the teaching deficiencies of Kita and Gang relative to claim 21.

Conclusion

This application now stands in allowable form and reconsideration and allowance is respectfully requested.

This response is being submitted on or before July 9, 2009, making this a timely response with a three month extension of time. Payment of this extension fee is authorized herewith. Please note that the patent owner has undergone a change in status and herewith claims small entity status for this extension fee. (See accompanying Assertion of Small Entity Statement.) It is believed that no additional fees are due in connection with this filing. However, the Commissioner is authorized to charge any additional fees, including extension fees or other relief which may be required, or credit any overpayment and notify us of same, to Deposit Account No. 04-1420.

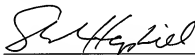
Respectfully submitted,

DORSEY & WHITNEY LLP
Customer Number 25763

Date:

July 9, 2009

By:



Stuart R. Hemphill, Reg. No. 28,084
(612) 340-2734